

REMARKS

Reconsideration and withdrawal of the rejections of the claimed invention is respectfully requested in view of the amendments, remarks and enclosures herewith, which place the application in condition for allowance.

I. STATUS OF CLAIMS AND FORMAL MATTERS

Claims 1-14, 16 and 17 are pending in this application. Claim 1 has been amended to add additional limitations regarding the nature of the second control element. Support for these amendments can be found in the specification on page 12, lines 3-4 (form of a film), page 12, lines 17-18 (possession of gaps) and page 13, lines 1-2 (number of gaps). Claims 1-9, 11-14, 16 and 17 have been amended to remove the number designations for the individual elements. No new matter has been added by this amendment.

It is submitted that the claims, herewith and as originally presented, are patentably distinct over the prior art cited in the Office Action, and that these claims were in full compliance with the requirements of 35 U.S.C. § 112. The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§ 101, 102, 103 or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

II. THE 35 U.S.C. 103(a) REJECTION HAS BEEN OVERCOME

Claims 1, 2, 4-14, 16 and 17 were rejected as allegedly being obvious by Paul. The applicants request reconsideration of this rejection for the following reasons.

Although it is believed that the claims prior to amendment were not obvious in view of Paul, in order to expedite prosecution, further limitations have been inserted for the description of the second control element which is not taught or suggested by the Paul reference. For comparative purposes, the elements of the applicants' claimed invention and Paul's references are shown below:

Claim 1	PAUL (US Patent 5,556,030)
A dispenser for controlled release of volatile substances	Air Freshener or Deodorizer Dispensing System (Title)
a reservoir (1) covered on its top face (2) and on its bottom face (3) by a first control element (6),	fragrance bearing member 58 ... retained between permeable membrane layers 50 and 55 (col. 13, l. 32-34)
said reservoir containing at least one volatile	highly concentrated, oil based solution of the

substance	desired fragrance (col. 3, l. 2-3)
first control element (6) which exerts a control function that is dependent on the physical properties of the at least one volatile substance (4) and the material properties of the constituents of the first control element (6),	membrane layer provides a controlled dispersion rate for the fragrance (col. 13, l. 41-42); permeable membrane having a porosity specifically selected for the molecular sizes of the fragrances being dispensed (col. 6, l. 36-38)
said control element (6) is fully covered by a second control element (7)	permeable membrane layers 50 and 55 are constructed with an overall size and shape substantially equivalent to the size and shape of side walls or panels 22 and 23 , ... mounted in juxtaposed spaced relationship to each other (col. 13, l. 4-8)
a second control element (7) which exerts a control function that is independent of the physical properties of the at least one volatile substance (4) and the material properties of the constituents of the first control element (6).	a plurality of holes or portals 33, 34, 35, and 36 are formed in side wall 22 (col. 8, l. 51-52); by removing sealing strip 38 from the desired number of portals, the precisely desired rate of dispersion ... is realized (col. 9, l. 6-9)
wherein the second control element is in the form of a film and possesses gaps wherein the number of said gaps is from 500 to 8000 gaps per m² of said film.	

(Note: It was presumed that the first 7 lines in paragraph 4. of the rejection applied to claim 1; claims 11-14 were specifically identified in the rejection. However, the basis for the rejection of claims 2, 4-10, 16 and 17 was not described in the rejection.)

Paul's device differs from the applicants' claimed invention by using a plurality of holes / portals. Theses holes are covered with a "sealing strip 38" that has to be peeled off by the consumer, i.e. Paul's device does not control the release of the active substance, the consumer is responsible for the controlled release of the active substance:

"Whenever the user is ready to employ air freshening/deodorizing container and dispensing system 20, scaling strip 38 is employed by pulling sealing strip 38 away from one or more of the portals otherwise maintained closed by sealing strip 38. As depicted in FIG. 4, sealing strip 38 is removed from portals 35 and 36, while maintaining portals 33 and 34 completely sealed. In this way, an average rate of dispersion of the air freshening/deodorizing composition is attained. As is apparent from the foregoing disclosure, by removing sealing strip 38 from the desired number of portals, the precisely desired rate of dispersion of the air freshening/deodorizing composition is realized. If maximum distribution is desired, sealing strip 38 is completely removed. However, any other rate of dispersion can be easily attained by uncovering the desired number of portals

otherwise scaled by strip 38. In this way, ***the consumer maintains complete control over the rate of dispersion of the air freshening/deodorizing composition*** while also assuring that prior to use, the air freshening/deodorizing composition is securely retained in sealed interengagement within container 21, with the composition being incapable of being dispersed or permeated through side walls or panels 22 or 23.” (col. 8, l. 64 – col. 9, l. 5; emphasis added)

As can be seen from FIG. 4 of Paul, the number of holes is necessarily low, so that the consumer is able to count the number of holes to be exposed without problem. In contrast, the applicants’ invention requires a “second control element” which exerts a control function that is independent from the physical properties of the volatile substance and the material properties of the first control element. In fact, there are gaps (8) in said second control element (7) which are responsible for this control mechanism (see e.g. page 12, lines 15-18 of the specification).

The number of gaps in the second control element (7) is much higher in the applicants’ claimed invention, namely between 500 and 8000 per square meter. (see page 13, line 1-2 of the specification). In this way, a “*defined reduction in the size of the surface area that covers the first control element*” can be achieved (see page 2, lines 35-37 of the specification). This mechanism for the controlled release of volatile substances is independent from the consumer’s actions of peeling away a scaling strip taught by Paul.

For these reasons, Paul does not teach all of the limitations of the applicants’ claimed invention and does not render their invention *prima facie* obvious.

Claim 3 was rejected as allegedly being obvious by Paul in view of Martens et al.

As claim 3 is dependent upon claim 1, the reasons given above for the unobviousness of the applicants’ claimed invention over Paul also apply for the combination of Paul in view of Martens.

In order to preserve the issue for appeal, the applicants also note that the devices of Paul and Martens are different from each other and there is no reason either from the references themselves or from one of ordinary skill in the art to isolate the “gap” requirement of Martens and insert it into the device of Paul nor is there any showing of likelihood of success for the change to the Paul device or that such substitution would not change the operation of Paul’s device.

CONCLUSION

In view of the remarks and amendments herewith, the application is believed to be in condition for allowance. Favorable reconsideration of the application and prompt issuance of a Notice of Allowance are earnestly solicited. The undersigned looks forward to hearing favorably from the Examiner at an early date, and, the Examiner is invited to telephonically contact the undersigned to advance prosecution. The Commission is authorized to charge any fee occasioned by this paper, or credit any overpayment of such fees, to Deposit Account No. 50-0320.

Respectfully submitted,
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